

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION**

RODNEY JASON HALL,

Plaintiff,

v.

ALLISON JUDGE; TRANSFORM
HEALTH RX; DR. POLK; LAVONNIA
WEAVER; CHERYRL HOLLOWAY,
and NURSE RHONDA,

Defendants.

CIVIL ACTION NO.: CV613-094

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff, who is currently housed at Central State Prison in Macon, Georgia, filed a cause of action pursuant to 42 U.S.C. § 1983 contesting certain conditions of his confinement while he was housed at Bulloch County Detention Center in Statesboro, Georgia. A prisoner proceeding in a civil action against officers or employees of government entities must comply with the mandates of the Prison Litigation Reform Act, 28 U.S.C. §§ 1915 & 1915A. In determining compliance, the court shall be guided by the longstanding principle that *pro se* pleadings are entitled to liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972); Walker v. Dugger, 860 F.2d 1010, 1011 (11th Cir. 1988).

28 U.S.C. § 1915A requires a district court to screen the complaint for cognizable claims before or as soon as possible after docketing. The court must dismiss the complaint or any portion of the complaint that is frivolous, malicious, fails to state a

claim upon which relief may granted, or seeks monetary damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1) and (2).

In Mitchell v. Farcass, 112 F.3d 1483, 1490 (11th Cir. 1997), the Eleventh Circuit interpreted the language contained in 28 U.S.C. § 1915(e)(2)(B)(ii), which is nearly identical to that contained in the screening provisions at § 1915A(b). As the language of § 1915(e)(2)(B)(ii) closely tracks the language of Federal Rule of Civil Procedure 12(b)(6), the court held that the same standards for determining whether to dismiss for failure to state a claim under Rule 12(b)(6) should be applied to prisoner complaints filed pursuant to § 1915(e)(2)(B)(ii). Mitchell, 112 F.3d at 1490. While the court in Mitchell interpreted § 1915(e), its interpretation guides this court in applying the identical language of § 1915A.

Plaintiff asserts that Transform Health RX was the medical contractor for the Bulloch County Sheriff's Department. Plaintiff contends that he received eye drops for his left eye, which he was supposed to receive four (4) times a day. However, Plaintiff asserts, there were only two (2) pill calls a day at the Bulloch County Sheriff's Department, and medical personnel doubled his drops on these occasions. Plaintiff asserts that his eye was burned, he lost vision in that eye, and his eye changed colors. Plaintiff also asserts that he asked the nurses why his eye changed colors and what the side effects of these eye drops were, and they responded that they did not know.

A plaintiff must set forth "a short and plain statement of the claim showing that [he] is entitled to relief." FED. R. CIV. P. 8(a)(2). In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must satisfy two elements. First, a plaintiff must allege that an act or omission deprived him "of some right, privilege, or immunity secured by the

Constitution or laws of the United States.” Hale v. Tallapoosa County, 50 F.3d 1579, 1582 (11th Cir. 1995). Second, a plaintiff must allege that the act or omission was committed by “a person acting under color of state law.” Id.

Plaintiff fails to set forth any facts alleging a plausible claim under section 1983. At most, Plaintiff asserts that Defendants acted negligently. However, an allegation that a defendant acted with negligence in causing a plaintiff injury is not sufficient to support a claim under 42 U.S.C. § 1983. Daniels v. Williams, 474 U.S. 327, 330-31 (1986). “Section 1983 imposes liability for violations of rights protected by the Constitution, not for violations of duties of care arising out of tort law.” Baker v. McCollan, 443 U.S. 137, 146 (1979). Plaintiff’s claims against Defendants Dr. Polk, Lavonna Weaver, Cheyrl Hollaway, and Nurse Rhonda should be dismissed.

Transform Health RX is a private entity which contracts with the Georgia Department of Corrections to provide services “traditionally within the exclusive prerogative of the state and becomes the functional equivalent of the municipality under section 1983.” Craig v. Floyd Cnty., Ga., 643 F.3d 1306, 1310 (11th Cir. 2011) (internal punctuation and citation omitted). In section 1983 actions, liability must be based on something more than a theory of respondeat superior. Bryant v. Jones, 575 F.3d 1281, 1299 (11th Cir. 2009); Braddy v. Fla. Dep’t of Labor & Employment Sec., 133 F.3d 797, 801 (11th Cir. 1998). A supervisor may be liable only through personal participation in the alleged constitutional violation or when there is a causal connection between the supervisor’s conduct and the alleged violations. Id. at 802. “To state a claim against a supervisory defendant, the plaintiff must allege (1) the supervisor’s personal involvement in the violation of his constitutional rights, (2) the existence of a custom or

policy that resulted in deliberate indifference to the plaintiff's constitutional rights, (3) facts supporting an inference that the supervisor directed the unlawful action or knowingly failed to prevent it, or (4) a history of widespread abuse that put the supervisor on notice of an alleged deprivation that he then failed to correct." Barr v. Gee, 437 F. App'x 865, 875 (11th Cir. 2011). Because Plaintiff fails to set forth a viable underlying constitutional claim, Transform Health RX and Allison Judge, its Chief Executive Officer, cannot be held liable to Plaintiff based on respondeat superior principles. Myers v. Bowman, 713 F.3d 1319, 1328-29 (11th Cir. 2013) (stating that a supervisor cannot be held liable under § 1983 unless the supervised official committed an underlying violation of a constitutional right).

CONCLUSION

Based on the foregoing, it is my **RECOMMENDATION** that Plaintiff's Complaint be **DISMISSED** based on his failure to state a claim pursuant to 42 U.S.C. § 1983.

SO REPORTED and **RECOMMENDED**, this 10th day of December, 2013.



JAMES E. GRAHAM
UNITED STATES MAGISTRATE JUDGE